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MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-1027

IN RE EVERETT W. GROSS,

Petitioner,

THE SUPREME COURT OF THE
STATE OF MONTANA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF MONTANA

EVERETT W. GROSS
Box 795
Helena, Montana 59601
Petitioner pro se

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TO THE SUPREME COURT OF THE STATE OF MONTANA

MOTION FOR PERMISSION TO FILE PETITION FOR WRIT OF CERTIORARI

Comes now, Everett W. Gross and respectfully moves this Honorable Court:

That he be permitted to file his petition for a Writ of Certiorari directed to the Montana Supreme Court, which petition is submitted herewith and which petition sets out the grounds that this petitioner wishes to present to this Honorable Court showing his right to have a Writ of Certiorari issue in this case.

That the United States Supreme Court has jurisdiction in this matter under Title 28, 1257(3), in that this petitioner has been denied that due process of law as guaranteed by the Fifth Amendment to the United States Constitution and has been denied that due process of law and equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

Petitioner Everett W. Gross respectfully asks this Honorable Court for permission to file for a Writ of Certiorari.

Respectfully submitted,

/s/ Everett W. Gross

Everett W. Gross
Box 795
Helena, Montana
Petitioner pro se

SUBSTANTIVE DOCUMENT

Petitioner Everett W. Gross was admitted to the Montana Bar upon examination on October 30, 1958.

On June 20, 1967, petitioner was temporarily suspended from practice by the Montana Supreme Court, all as set out in

"Statement of Facts."

On September 26, 1972, petitioner first learned, by radio broadcast, that he had been disbarred by the Montana Supreme Court.

Petitioner was given no notice of such proceedings. No hearing was afforded him before either the Montana Supreme Court or the State Commission on Practice which it had established. Order of disbarment is attached as Appendix A.

On October 6, 1972, petitioner timely filed with the Montana Supreme Court a petition for rehearing, a copy of which is hereto attached as Appendix B.

On October 19, 1972, the Montana Supreme Court issued an "order" allowing petitioner's counsel to appear and present matters, Appendix C.

On November 1, 1972, the Montana Supreme Court issued its final order in this matter, Appendix D, in which it refused to read the record which was the basis of the conviction of the appellant, as set out in Statement of Facts. It refused to allow the Commission on Practice to give this appellant a hearing. It stated that the court must proceed to disbar under the provisions of 93-2028, R.C.M. 1947, in which the court disregarded its 1970 decision of *In Re John Kline*, 156 Mont. 177-180, 477 P.(2d) 881, wherein the court, in effect, reverses the ancient cases it says compel it to disbar this appellant. The court found Kline guilty of moral turpitude in failing to pay income tax on $107,410.02 and failing to pay Social Security taxes and withholding taxes of $4,866.65. In this case Kline was afforded a hearing before the Commission on Practice, full consideration by the court. In the appellant's case the court says it is required by law to disbar this petitioner, but in the *Kline* case this is watered down to:

> "Under the provisions of section 93-2026 this Court has exclusive jurisdiction to remove or suspend attorneys on the grounds therein set forth, including 'his conviction of a felony or misdemeanor involving moral turpitude in which case the record of conviction is conclusive evidence.' "

The court, under all these circumstances, did not disbar Kline, but issued an indefinite suspension. This appellant has been denied that equal protection of law as required by the Fourteenth Amendment to the United States Constitution.

The United States Supreme Court has jurisdiction to, and should, determine this matter.

Respectfully submitted,

/s/ Everett W. Gross

Everett W. Gross
Box 795
Helena, Montana
Appellant pro se

Your petitioner Everett W. Gross prays that a writ of Certiorari issue to review the judgment of the Montana Supreme Court rendered on September 26, 1972, and the judgment of the court denying this petitioner a rehearing on November 1, 1972.

OPINIONS BELOW

The order of the Montana Supreme Court disbarring this petitioner is not yet reported, appearing only in Montana State Reporter, Volume 29, page 778, but a copy of which is hereto attached as Appendix A.

The order of the Montana Supreme Court allowing counsel for petitioner to appear and present matters is unreported, but is hereto attached as Appendix C.

The order of the Montana Supreme Court issued November 1, 1972, denying this petitioner a rehearing or any type of hearing and making the judgment of the court final is unreported, but is hereto attached as Appendix D.

JURISDICTION

The final judgment order of the Montana Supreme Court, Appendix D, was entered on November 1, 1972, and this petition is timely filed within the provisions of Title 28, 2101(c).

The United States Supreme Court has jurisdiction of this petition for a Writ of Certiorari under Title 28, 2104. Constitutional questions involved were properly raised with the Montana Supreme Court.

QUESTIONS PRESENTED

1. Can the Montana Supreme Court disbar this petitioner without notice and without hearing of any kind and refuse him a hearing before the Montana Supreme Court or the Montana State Commission on Practice which the court has established?

2. Can the Montana Supreme Court disbar this petitioner solely on the basis of a conviction in the Federal Court of the Northern District of Iowa, when an examination of such case would show it to be a sham and a farce, conducted before a judge who was a long time enemy of this petitioner, 298 Fed. Supp. 449-457, and who was four times reversed by the 8th Circuit Court of Appeals in the matter of this petitioner: 395 F.(2d) 216, reversed; No. 19420, 8th Circuit Court of Appeals (unreported), reversed, wherein the judge attempted to refuse to admit petitioner to bail; 416 F.(2d) 1205, vindictive sentence reversed; 298 Fed. Supp. 457, wherein the judge had refused to be disqualified and the 8th Circuit Court of Appeals, in effect,

told him to recuse himself or they would do it for him? This was all after the damage had been done.

3. Can this petitioner be disbarred solely on the basis of a conviction of Title 18, 1341-1343, when it was never alleged or proven that anyone was ever defrauded out of one penny?

4. Can the Montana Supreme Court disbar this petitioner on the basis of Appendix A, citing Montana statute, and on the basis of Appendix C, citing ancient cases, and on the basis of Appendix D, wherein they say they are compelled to do so, when, in fact, the Montana Supreme Court has refuted and reversed all of the above in *In Re John Kline*, 156 Mont. 177-180, 477 P.(2d) 881, wherein Kline entered a plea of guilty to all counts which the court said involved moral turpitude but wherein the court found no compunction to disbar, which they say they are compelled to do in the case of this petitioner?

5. By being denied any form of notice or hearing, has this petitioner received that due process of law as guaranteed him by the Fifth Amendment to the United States Constitution?

6. By disbarring this petitioner and not disbarring Kline, has this petitioner been availed of the equal protection of the law, as guaranteed him by the Fourteenth Amendment to the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States of America, Amendment Five, "nor be deprived of life, liberty or property without due process of law."

Amendment Fourteen, "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws."

STATEMENT OF FACTS

Everett W. Gross is 60 years of age. He was born and raised on a farm in Winneshiek County, Iowa, where he attended rural and high school, graduating in 1930. At the age of 20 he started in business for himself in Iowa, which continued until 1957. In 1957 Everett W. Gross received from the University of Montana a certificate of Academic Equivalency and successfully passed the Montana Bar Examination in 1958 and was admitted to practice before the Montana Supreme Court on October 30, 1958.

In 1935, Everett W. Gross married Laura Mary Harvey of Ossian, Iowa. She teaches the retarded deaf at the Montana State Training School at Boulder, Montana. The couple has two children, a son, Dalton, who teaches English Literature at Southwest Texas State University, and a daughter, Carol, married to a deputy sheriff in LaConia, New Hampshire.

In 1959 and 1960 petitioner entered several criminal cases in Iowa, in each instance meticulously complying with Iowa law as to associate counsel, but petitioner incurred the violent hatred and enmity of bureaucratic people whose practice of Frontier Justice was halted, as well as this petitioner's forcing the correction of unbelievable and inhumane conditions existing in state institutions. A syndicate came into being to "get" this petitioner by whatever means needed--and few have been spared or omitted. The terminology seems severe, but there is only one segment of American society that practices hurting a man by hurting his family, blackmail and attempted bribery to obtain perjured testimony. Speaking frankly, brings into focus just what happened in Iowa. In 1960 the syndicate attempted unsuccessfully to have

this appellant held in contempt of the Iowa Supreme Court. A written stipulation of settlement was promptly broken by Assistant Attorney General Neeley in order to gain personal publicity. In 1964 the syndicate attempted to get an indictment against this appellant before a Federal Grand Jury at Ft. Dodge, Iowa claiming that appellant had opened a bank account at the Exchange State Bank at LaCrosse, Wisconsin, as a scheme to defraud Bertha Aaby, Western Union Telegraph Co., and Decorah State Bank of Decorah, Iowa. The Grand Jury refused to indict. In 1965 the organization again presented the same matter to a Federal Grand Jury at Cedar Rapids, Iowa, and again the Grand Jury refused to indict. At the Ft. Dodge Grand Jury, Bertha Aaby and officers of the Exchange State Bank testified. In 1965, at Cedar Rapids, W. P. Ronban of Decorah State Bank, and officers of Western Union Telegraph Co. testified. The syndicate, not to be defeated, presented the same matter a third time, to a Federal Grand Jury in Sioux City, Iowa, and by a pep talk from a postal inspector and unlawful means, obtained an indictment against this petitioner and his wife. This matter was tried to a jury at Cedar Rapids, Iowa in 1967 and resulted in a conviction. Rules of evidence were ignored and the prosecution was given carte blanche to proceed, which resulted in a reversal by the 8th Circuit Court of Appeals, 395 F.(2d) 216. The matter was tried again at Cedar Rapids in 1968 before the same judge. This petitioner violently argued that Judge McManus should be disqualified but petitioner's attorney felt that after being reversed, he would conduct himself in a judicial manner. The results were that everything that can be done to influence a jury and not appear in the cold record was done, again along with a complete disregard of rules of evidence. The trial resulted in a second conviction and, as an act of vengeance for having been reversed, the judge doubled the sentence of this appellant. This was reversed by the 8th Circuit Court of Appeals, 416 F.(2d) 1205. The

organization, feeling that it would be reversed again by the 8th Circuit Court of Appeals, through the most illegal means obtained a second indictment against this petitioner at Ft. Dodge in 1968. Your petitioner appeared pro se and disqualified Judge McManus, who refused to step down. Petitioner then petitioned the 8th Circuit Court of Appeals for mandamus to compel Judge McManus to step down, which the 8th Circuit Court of Appeals did, 298 Fed. Supp. 449-457. This matter was then transferred to the Honorable Judge Hanson, who, after hearing the government's case, granted a judgment of acquittal, and in so doing told the U.S. District Attorney, Asher Schroeder, "If you had presented these facts to the grandjury there never should have been an indictment here in the first place."

In appearing before the 8th Circuit Court of Appeals and the jury, U.S. District Attorney Donald O'Brien lied profusely and unabashedly. In appearing before the 8th Circuit Court of Appeals, U.S. District Attorney Asher Schroeder lied profusely to the court, which was par for the course in the entire proceeding.

It is most respectfully submitted that confidence in the courts cannot be taken as an accepted matter when a court suspects or knows that a lawyer, prosecution or defense, is standing before the court and lying, without doing something about it. In 416 F.(2d), page 1210, we find:

> "The suggestion is that earlier Federal Grand Juries at Ft. Dodge and Cedar Rapids had refused to indict. *The government response is that is just not true.*" (Emphasis supplied.)

Here we have the United States District Attorney appearing as an unmitigated liar and the matter is unfortunately glossed over with, "Whether true or not, the point has no legal significance."

It is respectfully submitted that what is most significant is that of a lawyer lying to the court. No good purpose is obtained by couching the fact that a man is a liar by using lace handkerchief terminology. Petitioner has set out the witnesses at these Grand Juries.

Petitioner petitioned the United States Supreme Court for certiorari, which was denied.

Petitioner spent a little over four months in the Federal Hospital at Springfield, Missouri as a heart patient, and when the parole hearing commissioner from Washington investigated the circumstances surrounding what had happened in this case, parole was effected through Washington in ten days. Parole expired in April 1972.

In 1967, following the conviction of this appellant, as before set out, which conviction was reversed by the 8th Circuit Court of Appeals, 395 F.(2d) 216, a complaint against this appellant was filed by the Helena, Montana local grievance committee recommending disciplinary action. This report was delivered to the State Commission on Practice, which never gave this petitioner a hearing, but recommended to the Montana Supreme Court that appellant be given a hearing. This was not done. The court, on June 20, 1967, issued an order to show cause as to why this appellant should not be temporarily suspended. Appellant agreed not to resist this temporary suspension, pending the outcome of the appeal to the 8th Circuit Court of Appeals. The court reversed, 395 F.(2d) 216. Petitioner did not apply for reinstatement, desiring to wait for final determination of the case, in event of retrial. All questions before the local grievance committee, the State Commission on Practice and the Montana Supreme Court to this date became moot. Following retrial in 1968, and the 8th Circuit Court of Appeals' reversal of the sentence but

affirmation of conviction and denial by the United States Supreme Court of certiorari, this appellant has been afforded no hearing of any kind before anybody, and when the Montana Supreme Court summarily disbarred this petitioner it thought that the conviction was on a completely separate matter.

The saddest part of this statement of facts is that the Montana Supreme Court, certainly one of the finest in the United States, by not knowing any of the facts unwittingly became the vehicle for accomplishing the purposes of the criminal conspiracy in Iowa, that of preventing this appellant from practicing law.

REASONS FOR GRANTING THE WRIT

The questions presented by this petitioner have never been decided by the United States Supreme Court, *Ex Parte Wall*, 27 L.Ed. 552, 107 U.S. 265, 2 S.Ct. 567, notwithstanding. The slight relevance here is not basic to the question and dates to the date of thinking of strict caveat emptor and the black snake whip.

Petitioner has exhausted all state remedies.

The questions presented here are of paramount interest and concern to all Americans and particularly in our society, wherein such a great number of people are dependent on possessing a license to perform their trade or occupation in earning a living for their families and the right of a court or administrative body to take away such right summarily should be decided by this Honorable Court.

The question of the right of a court or administrative body to take away the right of a citizen to earn a living by depriving him of his license needed to practice his profession, without any form of notice or hearing, should be decided by this Honorable

Court.

In 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158, Justice Sutherland said:

> "It has never been doubted by this court or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment and that they together with a legally competent tribunal having jurisdiction of the case constitute basic elements of the constitutional requirements of due process of law."

In 98 L.Ed. 855, we find:

> "Procedural due process, that is the element of the due process provisions of the Fifth and Fourteenth Amendments which relate to the requisite characteristics of proceedings seeking to effect a deprivation of life, liberty, or property, may be described as follows: one whom it is sought to deprive of such rights must be informed of this fact (that is, he must be given notice of the proceedings against him); he must be given an opportunity to defend himself (that is a hearing); and the proceedings looking toward the deprivation must be essentially fair.
>
> "The courts are in complete agreement that, to meet the requirements of due process of law, it is necessary that a lawyer or doctor or other medical practitioner whose license it is sought to suspend or revoke must be given notice of the pending suspension or revocation and must be given an opportunity to be heard in his own defense."

The question of the right of a state Supreme Court to arbitrarily disbar this petitioner without a hearing and merely suspend others, *In Re Kline*, 156 Mont. 177-180, 477 P.(2d) 881,

should be determined by this Honorable Court as to the Fourteenth Amendment to the United States Constitution, guarantee of equal protection under the law.

In *Truax v. Corrigan*, 257 U.S. 311, 66 L.Ed. 254, at 263, Justice Taft said:

> "Our whole system of law is predicated on the general fundamental principle of equality of application of the law."

CONCLUSION

For these reasons, a Writ of Certiorari should issue to the Montana Supreme Court to review the order of disbarment of this appellant.

Respectfully submitted,

/s/ Everett W. Gross

Everett W. Gross
Box 795
Helena, Montana
Appellant pro se

AFFIDAVIT OF SERVICE

State of Montana)
County of Lewis & Clark) ss.

I, Everett W. Gross, say on oath, that I am the herein appellant, that on the *23rd* day of January, 1973, I mailed three true, complete and correct copies of the foregoing printed Petition for a Writ of Certiorari to the Supreme Court of Montana to the following:

Hon. Thomas E. Kearney
Clerk, Montana Supreme Court
Capitol Building
Helena, Montana 59601

and to

Hon. Robert Woodahl
Attorney General of the State of Montana
Capitol Building
Helena, Montana 59601

by placing the same in envelopes addressed as above, with proper first class postage attached, and depositing them in the United States mails at Helena, Montana, on said date.

/s/ Everett W. Gross

Subscribed and Sworn to before me this _____ day of January, 1973.

/s/ Gwen Blacker
Notary Public for the State of Montana; Residing at Helena. My Commission expires *October 29, 1974*.

APPENDIX A

IN THE SUPREME COURT
OF THE STATE OF MONTANA

I, Thomas J. Kearney, Clerk of the Supreme Court of the State of Montana, do hereby certify that the annexed is a full, true and correct copy of Per Curiam Order IN THE MATTER OF EVERETT W. GROSS, as received and filed in this office on the Twenty-sixth day of September A.D. 1972.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Supreme Court, at Helena, the Capital, this 2nd day of October, A.D. 1972.

(SEAL)

/s/ Thomas J. Kearney
Clerk of the Supreme Court

IN THE SUPREME COURT
OF THE STATE OF MONTANA
No. 11345

IN THE MATTER OF
EVERETT W. GROSS

FILED Sep 26 1972, Thomas J. Kearney, Clerk of Supreme Court of Montana

ORDER

PER CURIAM:

On June 20, 1967, an order to show cause was issued in this matter following receipt of a complaint seeking disciplinary action against the above named attorney. The complaint alleged that Gross had been convicted by a jury of the offense of devising and intending to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, in the United States District Court for the Northern District of Iowa, Eastern Division; that such judgment and commitment was entered

on March 29, 1967, and Gross had been committed to the custody of the Attorney General of the United States for imprisonment.

Under the provisions of section 93-2026, R.C.M. 1947, and Section XI, Rules of the Commission on Practice of this Court, we may suspend an attorney's license to practice law during the pendency of such proceeding. Pursuant thereto an order was entered suspending Everett W. Gross as an attorney and counselor at law pending the appeal of his conviction.

Thereafter Gross successfully appealed to the Eighth Circuit Court of Appeals and the judgment of conviction was set aside. A new trial was had and Gross was again convicted following a jury trial on July 31, 1968 and was committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two years on each of several counts, said sentences to run concurrently with each other. Notice of appeal was filed on August 5, 1968, and following denial of a writ of certiorari by the Supreme Court of the United States mandate was received on April 13, 1970. On April 20, 1970, Gross was resentenced pursuant to the original judgment and commitment of July 31, 1968.

It appearing that the crime of which Everett W. Gross was convicted, sentenced and committed involved moral turpitude, and the Court being in receipt of certified copy of the judgment and commitment entered in the United States District Court of the Northern District of Iowa, hereinbefore referred to, and pursuant to section 93-2026, R.C.M. 1947, and Section XI, Rules of the Commission on Practice of this Court, the said Everett W. Gross is ordered disbarred from the practice of law.

The Clerk of this Court shall give notice of this order to Everett W. Gross, his counsel, the Clerks of the district courts of the First, Second, Third, Fourth, Eighth, Tenth, Fourteenth and Eighteenth judicial districts, the Chairman and Secretary of

the Commission on Practice, the Clerk of the Federal District Court for the District of Montana, and the Clerk of the 9th Circuit Court.

Dated this 26th day of September, 1972.

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF MONTANA

(Title omitted in printing)

MOTION AND PETITION

COMES NOW the Respondent, Everett W. Gross, and respectfully petitions and moves the Court:

I.

That the Order of the Court entered herein on September 26, 1972, be vacated for the reason that the same was entered without notice to the Respondent or his counsel, or hearing or an opportunity to be heard.

II.

That a Complaint was filed herein on or about June 20, 1967, upon which an Order to Show Cause was issued on said date which included an Order of Suspension of the Respondent as an attorney and counselor at law, said Order to Show Cause being returnable June 30, 1967, and providing that said Respondent, Everett W. Gross, might appear before the Court to then and there show cause, if any, why said Order of Suspension should be set aside.

III.

That in response to said Complaint and Order to Show Cause, on June 29, 1967, Respondent filed a return to said Order to Show Cause, adopting by reference certain documents theretofore filed with the Grievance Committee of the First Judicial District of the State of Montana, including Consolidated Motions and an Answer, together with memorandums of authority. That on said

date on application of counsel for said Respondent, the above-entitled Court, by Order duly given and made, vacated the hearing on said Order to Show Cause, subject to the further Order of the Court. A copy of said Order is annexed hereto, marked Exhibit "A", and by this reference made a part hereof.

IV.

That it is respectfully asserted that the Order entered herein on September 26, 1972, without notice to Respondent or his counsel of record, in view of the allegations of the Answer on file in response to the original Complaint of the Grievance Committee and the return to the Order to Show Cause issued June 20, 1967, constitutes a violation of the guarantee of due process of law contained in the Fifth and Fourteenth Amendments to the Constitution of the United States, and Sections 3, 16 and 27, Article III, of the Constitution of Montana.

This Motion and Petition is made and based upon the records and files herein.

ARTHUR P. ACHER
P. O. Box 615
316 Fuller Avenue
Helena, Montana 59601

/s/ Arthur P. Acher
Attorney for Respondent

MEMORANDUM

It is respectfully submitted that the Answer filed by the Respondent in response to the Citation issued on June 20, 1967, presents issuable facts precluding the entry of a final Order of disbarment prior to a hearing on the merits.

It is suggested that the Order of the Court dated September 26, 1972, is premature. The case is not unlike *State v. Baker*, 135 Mont. 180, 340 P.(2d) 142. There the trial court entered a final judgment in an injunction proceeding after a preliminary hearing.

The Court said:

> "Under the foregoing definition, the injunction and order of abatement in this proceeding was a final judgment. The appellant's motion to strike was a pleading, and the movant is allowed time 'to further plead after the court makes its order or decision on his motion.' McLeod v. McLeod, 124 Mont. 590, 592, 228 Pac.(2d) 965, 967. Hence the district court erred in granting the final injunction and order of abatement while the motion to strike was pending and before issues had been fully joined. '*The defendant in the district court * * * is entitled to his day in court, and to have the cause tried upon the merits upon proper pleadings before any final decree is rendered.*' State ex rel. Thompson v. District Court, 132 Mont. 53, 61 313 Pac.(2d) 1034, 1038." (Emphasis supplied.)

The Court continued:

> "This district judge was not authorized, upon the interlocutory hearing, to enjoin the defendant permanently as his order purported to do. Accordingly, the order of the district court is modified as follows: Direction is hereby given that the injunction and order of abatement be amended so that the appellant will be enjoined only until final trial, or further order of the district court. The personal property mentioned in the order of abatement shall, by order of the district court, be returned by the sheriff and the appellant shall by said order be enjoined and restrained from removing the same until final trial, or further order of the district court."

Here a hearing date had theretofore been fixed, namely June 30, 1967, and was vacated on June 29, 1967, subject to the further Order of the Court. It is submitted that the Respondent is entitled to a hearing on the merits with respect to the matters set forth in his Answer and in the return to the Order to Show Cause.

In Re Peters, 73 Mont. 284, 235 Pac. 772, involved a disbarment proceeding subsequent to a conviction in the Federal

Court wherein the Respondent contended that the record of conviction alone did not authorize his disbarment. The Court considered the merits of the defense presented by Mr. Peters, stating:

> "But as counsel contends that the crime of which Peters was convicted does not involve moral turpitude, and as Peters has long enjoyed the confidence of this court, and the record hereinafter referred to discloses that he derived no benefit or profit to himself from the transactions which led to his conviction, but, on the contrary, ruined himself financially as well as socially in an attempt to keep the bank going, in justice to him we will pass the question whether he was convicted of a felony or a misdemeanor, and the question whether, under the statute, where the conviction is for the commission of a felony, the limiting clause 'involving moral turpitude' is to be considered, and resolve the question only whether the crime of which he was convicted involved moral turpitude. To this end we have carefully read the entire record of the trial before the federal court, bearing in mind the approved definition of the phrase, which is: 'Everything done contrary to justice, honesty, modesty or good morals, is said to be done with turpitude.' (Citing cases)"

In the *Peters* case the opinion of the Court recites that the Court had carefully read the entire record of the trial; so here it is submitted that the Court must likewise consider the record of the trial and the contentions of the Respondent as set forth in the Answer and in the return before entering a final judgment. In this connection, in a note appearing at 98 L.Ed. 855, it is stated:

> "(b) Necessity of notice and hearing. The courts are in complete agreement that, to meet the requirements of due process of law, it is necessary that a lawyer or doctor or other medical practitioner

whose license it is sought to suspend or revoke must be given notice of the pending suspension or revocation and must be given an opportunity to be heard in his own defense. (Citing long list of cases)"

Respectfully submitted,
ARTHUR P. ACHER
P.O. Box 615
316 Fuller Avenue
Helena, Montana 59601
/s/ Arthur P. Acher
Respondent's Attorney

(Certificate of Mailing omitted)

IN THE SUPREME COURT
OF THE STATE OF MONTANA

(Title omitted in printing)

ORDER

The return day heretofore fixed in the Order to Show Cause of June 20, 1967, is vacated, subject to the further Order of the Court.

DATED this 29th day of June, 1967.

/s/ James T. Harrison
Chief Justice

FILED June 29 1967, Thomas J. Kearney, Clerk of the Supreme Court, State of Montana

EXHIBIT A

APPENDIX C

IN THE SUPREME COURT
OF THE STATE OF MONTANA

(Title omitted in printing)

ORDER

PER CURIAM:

Everett W. Gross files herein a motion and petition seeking the vacation of our order of September 26, 1972, which disbarred him because of his conviction of a felony involving moral turpitude.

Petitioner alleges that said order was entered without notice to him or his counsel, or a hearing or an opportunity to be heard.

Section 93-2026, R.C.M. 1947, provides in part:

> "Disbarment of attorneys--causes--jurisdiction. The supreme court of the state shall have exclusive jurisdiction to remove or suspend attorneys and counselors at law, and an attorney and counselor may be removed or suspended for any of the following causes, arising after his admission to practice.
>
> "1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence."

Section 93-2028, R.C.M. 1947, in part further provides:

> "Proceedings for removal or suspension. The proceedings to remove or suspend an attorney and counselor, under the first subdivision of section 93-2026, must be taken by the court on the receipt of a certified copy of the record of conviction. * * *".

This Court has held under these sections that we have no discretion and must proceed on receipt of a certified copy of the record of conviction, which is deemed to be conclusive evidence. See: In re Bloor, 21 Mont. 49, 52 P. 779; In re Wellcome, 23 Mont. 140, 58 P. 45.

As stated in our order of September 26, 1972, a certified

copy of the judgment and commitment has been received by this Court.

This Court has further held that upon receipt of a certified copy of the record of an attorney's conviction of a felony, if such record of the judgment of conviction is final, the name of the attorney will be stricken from the roll of attorneys without formal charge or notice to him. See: In re Sutton, 50 Mont. 88, 145 P. 6; In re Thresher, 54 Mont. 474, 170 P. 1163; In re Peters, 73 Mont. 284, 235 P. 772.

As stated in our order of September 26, 1972, Gross sought a writ of certiorari from the Supreme Court of the United States, and such application was denied, resulting in the judgment of conviction becoming final.

However, we will hear whatever matters your counsel may wish to present and we have set the hour of 10:00 a.m., on October 30, 1972, for that purpose.

Copy of this order shall be served by mail by the Clerk of this Court upon petitioner, his counsel, and personally upon the Attorney General's office.

Done this 19th day of October, 1972.

FILED Oct 19, 1972, Thomas J. Kearney, Clerk of Supreme Court State of Montana

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APPENDIX D

IN THE SUPREME COURT
OF THE STATE OF MONTANA

(Title omitted in printing)

ORDER

PER CURIAM:

On September 26, 1972, following receipt of a certified copy of a judgment of conviction and commitment entered in the United States District Court of the northern district of Iowa, which found Everett W. Gross guilty of a felony involving moral turpitude, and wherein he was sentenced and committed to the custody of the attorney general or his authorized representative for a period of two years on each of several grounds, said sentences to run concurrently with each other, this Court entered its order of disbarment in accordance with the provisions of section 93-2026, R.C.M. 1947, and Sec. XI, Rules of the Commission on Practice of this Court.

On October 6, 1972, Gross filed a motion and petition asserting that the order of September 26, 1972, having been entered without notice to him or his attorney constituted a violation of the guarantee of due process of law.

On October 19, 1972, this Court entered its order wherein was set forth the Montana statutes, rules of this Court and applicable opinions covering like situations to that here existing, pointing out that no hearing is required to be had, the record of the conviction being conclusive. We did, however, set a time for hearing whatever matters Gross' counsel might wish to present.

At the time fixed for the hearing counsel appeared, filed a supplement to the previous motion and presented oral argument.

Counsel brought before the Court a transcript of the trial wherein Gross was convicted, suggesting that such record should be reviewed by this Court to determine whether or not such record supports the conviction. This we decline to do. Gross appealed his conviction to the United States Circuit Court where it was affirmed and sought a writ of certiorari in the United States Supreme Court, which was denied. As far as this Court is

concerned, the conviction is final.

Counsel also suggests that the matter should be returned to the Commission on Practice in order that such commission could make findings, apparently with the thought that the commission would then recommend the discipline and the extent thereof. However, this would be an idle act in view of section 93-2026, R.C.M. 1947, providing that the record of the conviction is conclusive. Section 93-2028, R.C.M. 1947, provides that the Court must proceed on receipt of certified copy of the record of the conviction. The opinions of the Court have followed these guidelines. We are not impressed by the argument that our statutes only apply to convictions in Montana courts and that a different procedure should be adopted with regard to convictions in federal courts.

The motion and petition is denied.

DONE this 1 day of November, 1972.

FILED Nov 1, 1972, Thomas J. Kearney, Clerk of Supreme Court, State of Montana

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